

McVeigh William M Maj USAF USA MIL

From: Brown Daniel D Mr USAF USA CIV
Sent: Thursday, August 20, 2020 3:47 PM
To: McVeigh William M Maj USAF USA MIL
Subject: FW: (U) paperwork

DEFENDANT'S
EXHIBIT

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Classification: UNCLASSIFIED//FOUO
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Daniel Brown, CISSP, CEH, CSM, SCJP, SCJD, SCWCD
Payloads Architect
AFLCMC/HNC

From: [REDACTED] F NSA FTX12 USA GOV [REDACTED]
Sent: Thursday, August 20, 2020 2:16 PM
To: Brown Daniel D Mr USAF USA CIV [REDACTED]
Subject: RE: (U) paperwork

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Dan,

This morning I contacted Office of General Council (OGC) to verify that I have not violated any laws or statutes. They reviewed the following and concurred.

In April 2019 I contacted National Security Agency (NSA) OGC regarding outside work. OGC did not identify a conflict of interest because of the following:

1. I am employed by NSA as a Data Scientist, tasked with academic engagement (AE) and work-force development (WFD).
 - a. This means that I am a liaison to academia on matters related to data science, and I am tasked at NSA to build, train, and mentor a data science team.
 - b. I do not implement data science or machine learning algorithms, but rather advise on their use and application.
 - c. During my assignment at Office of the Director of National Intelligence (ODNI), my duties were exactly the same (AE and WFD), but at the IC level. However, at ODNI I was tasked with advising IC partners (not just NSA) on machine learning algorithms and their possible application in a variety of IC mission problems.
2. The proposed work (in April 2019) is a consultant for Global InfoTech (GiTi), not the US Government (USG), and my work is very specific: implement applied mathematics for cyber-physical systems. For nearly 20 years I have performed unclassified research, and published both papers and textbooks on this topic.
 - a. As a consultant for GiTi, I perform unclassified machine learning research, and provide white papers and implement numerical prototypes for adoption into cyber-physical applications. To my knowledge, GiTi

has several sub-contractors that use the result of my work, or provides these results to other USG contractors.

- b. My work for GiTi is "behind the scenes" and strictly task-oriented, and, to my knowledge, any interaction I have had with the USG is a factual presentation of progress updates on research or numerical prototypes.
- c. I have never represented GiTi to the USG for current or future contracts, nor do I have a vested interest in GiTi nor influence in the company or its leadership. Furthermore, to my knowledge, the math solutions that I provide GiTi is not for any contract with NSA.
- d. I have discussed this matter with my NSA leadership, and I have their approval to do this consulting outside of work hours.

OGC summarized the April 2019 guidance in an email received this afternoon:

Following up on our conversation today, the primary ethics laws and regulations that we have discussed in connection with your outside contracting work for GiTi are:

- 18 U.S.C. § 208 and 5 C.F.R. § 2635.502: Pursuant to this statute and regulation, you may not participate personally and substantially in any official NSA matter that affects the financial interests of your outside employer or to which an entity that you provide consulting services is a party. According to the information you have provided, you are not an employee of GiTi, and you do not work on NSA matters affecting GiTi's financial interests or to which GiTi is a party. Based on the facts provided, I previously advised that your participation in this outside employment would not require your disqualification from any NSA matters to which you were assigned.
- 18 U.S.C. § 205: This law prohibits you from personally representing anyone before a Federal department, agency, or employee in a covered matter in which the United States is a party or has a direct and substantial interest. As discussed in my previous email, this law would prohibit you from representing GiTi to the Air Force (or any other Federal agency) on contract matters between GiTi and the Air Force. Providing "behind-the-scenes" services to GiTi in connection with its contract with the Air Force would not violate this law.
- 5 C.F.R. § 2635.703(a): This regulation prohibits you from allowing the use of nonpublic information to further your own financial interests or the financial interests of another. This regulation would prohibit you from using non-public information gained through the course of your employment with NSA the further your private work for GiTi.

I hope the above is helpful.

(U//FOUO)

Amy [REDACTED]
Attorney
Office of the General Counsel
Administrative Law & Ethics
[REDACTED]

OGC Provided the following guidance in April 2019:

I am following up our emails and telephone conversation last week regarding your offer of employment outside your position with the NSA. As you indicated last week, you are the Chief/Lead Data Scientist for NSA-Texas. In that capacity, you are tasked with building a data science team, training and equipping them with the tools they need to solve mission

problems in Enterprise Discovery Operations. You further indicated that you have recently received an opportunity from Air Force CyberCom ("CyberCom") to assist with mathematical calculations in furtherance of its cyber-related mission. In this capacity, you would serve as a sub-contractor to the prime CyberCom contractor. You have indicated that your official responsibilities with the NSA are not related to the work that you would be doing for CyberCom. Further, the prime CyberCom contractor is not a business whose interests you could affect in the performance of your official duties with the NSA.

With respect to your outside employment, there are a few areas of concern you should be aware of. Conflict of interest statutes, as well as other criminal statutes, affect your outside employment while you are an Agency employee (and even after you leave the Agency). Below, I have provided much of the pertinent information from our website; however, you should read over all of the [information](#) before pursuing any outside employment.

The first statute is the financial conflict of interest statute, which would prohibit you from personally and substantially participating in your official Government duties on any particular matter that may affect an entity with which you have an outside business relationship, such as the CyberCom prime contractor. You have indicated that you do not have current responsibilities with the Agency that would affect the CyberCom prime contractor, but if you did, either now or in the future, you would be required to disqualify yourself in writing from taking any official actions affecting that company. The disqualification requirement would continue as long as you remain in a business relationship with that outside company or seeking employment with that company. You can find the Disqualification Template here:

A second criminal law (18 U.S.C. § 205) prohibits you from personally representing any other person (including companies) -- with or without compensation -- before a Federal department, agency or employee. You may not make representations to any federal officials (not just NSA personnel) on behalf of outside entities. Representation includes any oral or written communications that are intended to influence the official on a specific matter. Working "behind-the-scenes" on matters or strictly task-oriented activities do not violate this rule. Applying this rule to your circumstances, you may not be the individual responsible for communications with Air Force representatives (or any other federal employees) on the contract for which you are providing services. This includes oral or written communications. It does not include ministerial communications, such as requests for factual information. However, if a communication transitions from a factual exchange to a conversation in which differences of opinion may occur, this can create problems under the representation rule. Additionally, if the CyberCom prime contractor submits a product to CyberCom under your name, this would be considered a communication by you to CyberCom. Note that this rule does not prohibit you from identifying yourself as being associated with the CyberCom prime contractor for such things as being able to gain admittance to the facility where the work is to be performed.

In addition to the representation rule discussed immediately above, you are also prohibited by another rule (18 U.S.C. § 203) from receiving compensation that comes from the representation by others before a government department or agency on any matter in which the United States is a party or has a substantial interest. For example, you may not accept part of the profits in a profit-sharing arrangement if those profits come from representations to the Federal Government. Also, you may not work on a contingency fee basis for a private employer on a government contract (i.e., assist in preparing a response to a Federal RFP and receive a fee or payment only if the contractor is the successful bidder). You may accept a pre-set salary or a pre-established contractual fee (such as payment at an hourly rate) in connection with this outside engagement as long as there are no other benefits such as stock options, contingency fees, or profit sharing.

I hope the above guidance helps you in navigating this offer, but please do not hesitate to contact me anytime with questions.

(U//FOUO)

Amy [REDACTED]

Attorney

Office of the General Counsel

Administrative Law & Ethics
[REDACTED]

Very Respectfully,
Dr. [REDACTED]

From: Brown Daniel D Mr USAF USA CIV [REDACTED]
Sent: Wednesday, August 19, 2020 1:31 PM
To: [REDACTED] NSA FTX12 USA GOV [REDACTED]
Subject: (U) paperwork

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[REDACTED] – I need a copy of your paperwork from NSA saying that you can work as a contractor outside of NSA hours. Capt McVeigh is requesting this.

V/r,
Dan

Daniel Brown, CISSP, CEH, CSM, SCJP, SCJD, SCWCD
Payloads Architect
AFLCMC/HNC

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